2282.

# SUPREME COURT OF THE UNITED STATES.

## No. 131.

EDWIN BARTLETT, PLAINTIFF IN ERROR,

vs.

GEORGE P. KANE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF MARYLAND.

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THE UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

At a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two.

Present, the honorable John Glenn, judge of Maryland district; Z. Collins Lee, esquire, attorney; Thomas H. Kent, (of Jos.,) esquire, marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

EDWIN BARTLETT
vs.
GEORGE P. KANE, collector.

Be it remembered, that heretofore, to wit, on the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and fifty, the said Edwin Bartlett, by George William Brown and Frederick W. Brune, his attorneys, with the consent of the said George P. Kane, by Z. Collins Lee, his attorney, declared in the circuit court here against the said George P. Kane, in a plea of trespass on the case, &c., in the words and of the tenor following, to wit:

*Declaration.*

Circuit court of the United States, for the fourth circuit, in and for the district of Maryland.

George P. Kane, a citizen of the State of Maryland, and late of said district, and collector of the customs of the port of Baltimore, was attached to answer unto Edwin Bartlett, a citizen of the State of New York, in a plea of trespass on the case, &c.

And whereupon the said Edwin Bartlett, by Brown & Brune, his attorneys, complains: For that whereas the said defendant, acting in the office of collector aforesaid, on the thirteenth day of October, in the year eighteen hundred and forty-nine, to wit, at the district aforesaid, illegally exacted payment from the plaintiff of the sum of two thousand dollars for duties claimed by him to be payable on an importation by him, the plaintiff, into the port of Baltimore aforesaid, of four hundred and eighty seroons of bark, in the barque St. Joseph, from Arica, in Peru, in the month of September, eighteen hundred and forty-nine, in addition to, and over and above, the sum of seven thousand and thirty-five dollars and thirty cents, paid on the entry of said goods, and which last mentioned sum the plaintiff alleges to be the full legal duty chargeable on such importation; and which excess of duties, so illegally exacted, amounting to two thousand dollars as aforesaid, was made by the

plaintiff, under protest, to obtain possession of said goods so imported, whereby the defendant became liable to pay to the said plaintiff the sum of two thousand dollars so illegally exacted; and being so liable, the defendant in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, under took and faithfully promised the plaintiff to pay him the said sum of money when he should be thereunto afterwards requested.

And for that whereas the defendant, acting in his office of collector aforesaid, to wit, on the thirteenth day of October, in the year eighteen hundred and forty-nine, to wit, at the district aforesaid, illegally exacted payment from the plaintiff of the sum of eleven thousand dollars, as an additional duty or penalty of twenty per cent., for or by reason of an alleged undervaluation on the part of the plaintiff on his entry of four hundred and eighty bags of bark, imported by him in the month of September, in the year eighteen hundred and forty-nine, into the port of Baltimore, in the barque St. Joseph, from Arica, in Peru, when the plaintiff alleges there was no undervaluation in his said entry, and the payment of which additional duty or penalty, so illegally exacted, amounting to eleven thousand dollars as aforesaid, was made by the plaintiff, under protest, to obtain possession of said goods so imported, whereby the defendant became liable to pay to the said plaintiff the sum of eleven thousand dollars so illegally exacted, and being so liable, the defendant in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and faithfully promised the plaintiff to pay him the said sum of money when he should be thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the first day of March, in the year eighteen hundred and fifty, at the district aforesaid, was indebted to the said plaintiff in another large sum of money, to wit, the sum of other fifteen thousand dollars, for the work and labor, care, diligence, and attendance of the plaintiff by him before that time done, performed, and bestowed in and about the business of the defendant, for him, and at his special instance and request. And also in a like sum for divers goods, wares, and merchandise, by the said plaintiff before that time sold and delivered to the said defendant, and at his like special instance and request. And also in a like sum for other money by the said plaintiff before that time lent and advanced to, and paid, laid out, and expended for, the said defendant, and at his like special instance and request. And also in a like sum for other money by the said defendant before that time had and received, to and for the use of the said plaintiff; and being so indebted, the said defendant in consideration thereof, to wit, on the day and year aforesaid, at the district aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the day and year aforesaid, at the district aforesaid, accounted with the said plaintiff, of and concerning divers other sums of money, before that time

due and owing from the said defendant to the said plaintiff, and then being in arrear and unpaid; and upon such accounting, the said defendant was then and there found to be in arrear and indebted to the said plaintiff in another large sum of money, to wit, in the further sum of fifteen thousand dollars; and being so found in arrear and indebted, the said defendant in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and faithfully promised the said plaintiff to pay him the last mentioned sum of money when the said defendant should be thereto afterwards requested.

Nevertheless the said defendant, not regarding his said promises and undertakings, hath not yet paid the aforesaid several sums of money, or either of them, or any part of either of them, to the said plaintiff, (although so to do the said defendant was requested by the said plaintiff afterwards, to wit, on the day and year last aforesaid, and often afterwards, to wit, at the district aforesaid,) but to pay the same the said defendant hath hitherto altogether refused, and doth still refuse so to do, to the damage of the said plaintiff twenty thousand dollars, and thereupon he brings suit, &c.

BROWN & BRUNE,
*Plaintiff's attorneys.*

Which said declaration is thus endorsed, to wit:

*Agreement.*

Mr. Spicer, please file this nar. and docket case by consent to April term, 1850.

BROWN & BRUNE,
*For Plaintiff.*
Z. C. LEE,
*U. S. Attorney for Collector.*

*Appearance.*

And now here at this day, to wit, the first Monday in April, in the year of our Lord one thousand eight hundred and fifty, comes into the circuit court here as well the said Edwin Bartlett, by his attorneys aforesaid, as the said George P. Kane, by his attorney aforesaid.

*Rule—Plea.*

And thereupon, on motion of the said Edwin Bartlett, by his attorneys aforesaid, it is ruled by the court here, that the said George P. Kane answer to the declaration aforesaid of the said Edwin Bartlett in the plea aforesaid, or judgment by the court here will be entered against him in default thereof.

And the said George P. Kane, by his attorney aforesaid, defends the force and injury when and so forth, and prays leave of the court here to imparle until the first Monday in November next, and then to answer to the declaration aforesaid of the said Edwin Bartlett in the plea

aforesaid, and to him it is granted; the same day is given to the aforesaid Edwin Bartlett also.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty, to which said day the said George P. Kane had leave to imparle, and then to answer to the declaration aforesaid of the said Edwin Bartlett in the plea aforesaid, comes into the circuit court here, as well the said Edwin Bartlett, by his attorneys aforesaid, as the said George P. Kane, by his attorney aforesaid; and the said George P. Kane, by his attorney aforesaid, as before, defends the force and injury when and so forth. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by order of the court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-one, comes again into the circuit court here, as well the said Edwin Bartlett, by his attorneys aforesaid, as the said George P. Kane, by his attorney aforesaid. Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by order of the court here thereon, is further continued until the first Monday in November next.

At which said first Monday in November, in the year of our Lord one thousand eight hundred and fifty-one, comes again into the circuit court here as well as the said Edwin Bartlett, by his attorneys aforesaid, as the said George P. Kane, by his attorney aforesaid.

And now here at this day, to wit, the eighth day of November, in the year of our Lord one thousand eight hundred and fifty-one, the parties aforesaid, by their attorneys aforesaid, file in the circuit court here an agreement in the words following, to wit:

*Agreement.*

EDWIN BARTLETT
vs.
GEORGE P. KANE.

In the circuit court of the United States, Maryland district.

It is agreed that a commission to take testimony in the above case shall issue by consent to J. Stewart Jackson, of the city of Tacna, in Peru.

BROWN & BRUNE,
*For plaintiffs.*
Z. COLLINS LEE,
*District Attorney.*

*Plea—Issue.*

Thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, is further continued until the first Monday in April next.

At which said first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two, comes again into the circuit

court here as well the said Edwin Bartlett, by his attorneys aforesaid, as the said George P. Kane, by his attorney aforesaid; and the said George P. Kane, by his attorney aforesaid, as before, defends the force and injury when and so forth, and saith, that he did not assume upon himself in manner and form as the aforesaid Edwin Bartlett above against him hath complained, and of this he puts himself upon the country; and the said Edwin Bartlett in like manner, and so forth.

Therefore let a jury thereon appear before the court here immediately, by whom and so forth, and who neither and so forth, to recognise and so forth, because as well and so forth.

Whereupon, for trying the issue aforesaid, it is ordered by the court here that twenty persons from the pannel of petit jurors returned to the court here by the marshal of the Maryland district aforesaid be drown by ballot; and thereupon the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, thereupon the remaining twelve persons being called come, to wit:

*Jury.*

John R. Kelso, James Lucas, Theodore Denny, George W. Cox, Archibald Hart, Alfred Warfield, George W. Duvall, Charles Jessop, James M. Harding, Wm. M. B. Wilson, William B. Brooks, James N. Keys.

*Verdict.*

Who being empannelled and sworn to say the truth in the premises, upon their oath do say, that the said George P. Kane did not undertake and promise in manner and form as the said Edwin Bartlett within against him hath complained.

*Judgment.*

Therefore it is considered by the court here that the said Edwin Bartlett take nothing by his declaration aforesaid, but that he be in mercy, &c., for his false clamor, and that the said George P. Kane go thereof without day, &c. And it is also considered by the court here that the said George P. Kane recover against the said Edwin Bartlett the sum of by the court here unto him, the said George P. Kane, on his assent adjudged for his costs and charges by him about his defence in this behalf laid out and expended, and that he have thereof his execution against the aforesaid Edwin Bartlett, and so forth.

Memorandum. Before the jurors aforesaid withdrew from the bar of the court here, the said Edwin Bartlett, by his attorneys aforesaid, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed, and which is in form following, to wit:

*Bill of exceptions.*

EDWIN BARTLETT
vs.
GEORGE P. KANE.

In the circuit court of the United States, in and for the Maryland district.

At the trial of the above case, the plaintiff, to maintain the issue on his part, read to the jury the admissions and agreement.

*Admissions and agreement.*

EDWIN BARTLETT
vs.
GEORGE P. KANE.

In the circuit court of the United States, for the Maryland district. April term, 1852.

It is admitted, that in the month of September, 1849, the bark St. Joseph brought into the port of Baltimore 614 seroons of Peruvian bark, shipped at Arica, in Peru, in January preceding, and consigned to the plaintiff, residing in New York, as appears from the invoice, a copy of which is herewith filed, marked A.

That said bark belonged to Messrs. Pinto & Co., of Arica, and was obtained by them under the contract and circumstances shown by the testimony taken under the commission in the above cause.

It is admitted, that on the arrival of the St. Joseph in Baltimore, Messrs. Birckhead & Pearce, the agents of the plaintiff, entered two hundred seroons of the first quality of said bark for consumption, and *and* the rest of the invoice for warehousing; and that subsequently the defendant caused the whole of said import to be appraised; and that the official appraisers, acting in obedience to instructions from the Secretary of the Treasury in reference to the appraisement of this article, proceeded to ascertain the quantity of quinine in said bark by chemical analysis, in order to fix therefrom the dutiable value of said bark.

It is admitted that said appraisers, in accordance with said analysis, reported that the 134 seroons of third quality mentioned in the invoice were not undervalued; but that upon the other two parcels, valued in the invoice and entry at $49,737, Peruvian, or $45,758 04, American currency, they reported a deficiency of dutiable value in the amount declared in the invoice and entry of $7,339 56, upon which increased value a duty of fifteen per cent., amounting to $1,100 93, was exacted by the defendant, and likewise an additional duty, by way of penalty for under valuation, of twenty per cent. on the appraised value, amounting to $10,799 40, was likewise exacted; making, together, the sum of $11,900 33, which, in addition to the duty of fifteen per cent. on the dutiable value declared in the invoice and entry,

was paid by the plaintiff under protest, to obtain the possession and control of his said goods.

It is further admitted, that of the 254 seroons of first quality bark which were entered for warehousing, 25 were reshipped to Amsterdam by the plaintiff from Baltimore, and 103 were transported to New York, (whence 100 of them were also reshipped,) and thus said 125 seroons became entitled to drawback, which was paid to the plaintiff; but the penalty of twenty per cent. for under valuation on these seroons has never been returned.

It is agreed that the instructions of the Secretary of the Treasury, having reference to the questions involved in this case, may be referred to by either party for whatever purpose they may be legally, as well as all official documents from the custom-house.

That the official appraisers, on the 6th of October, 1849, notified Messrs. Birckhead & Pearce that they should require the production of all papers or documents relative to said importation, and Messrs. Birkhead & Pearce notified the plaintiff, Mr. Bartlett, of this requisition of the official appraisers; whereupon Mr. Bartlett, by his of the 11th of October, 1849, declined the production of the papers, &c., demanded and directed Messrs. Birckhead & Pearce to withdraw the appeal they had made, and to pay the duties and penalty required under protest; and at the same time proposed, as a final settlement, to pay the additional duties, provided he was released from paying the penal duty of 20 per cent.

This statement is subject to corrections by either party as to detail or explanation, as the oral testimony at the trial may require.

BROWN & BRUNE,
*For plaintiff.*
Z. COLLINS LEE,
*For defendant.*

And the invoice and bill of lading of the bark referred to therein:

*Invoice.*

Invoice of 614 zo. of bark, shipped by George T. Pinto & Co., on board the vessel "St. Joseph," Harvey, master, bound for Baltimore, being for their account and risk, and consigned to Edwin Bartlett, esq., of New York.

[J. T. P. & Co.]—200 ex'd—254 W. H.

| | | |
|---|---|---|
| Different counter marks. | 454 zeroons, 150 lbs. nett each, 681 q. flat bark, (quina tablo,) W. R. 69,102, 1,002, 1st quality, at 70 q. - - - - - - | 47,670 |
| J. P. Diff't counter marks. | 26 zo., W. R., 150 lbs. nett each, 39 ql. flat bark, (quina tablo,) W. R. 3,766, 66, 2d quality, at 53 qy. - - - - - | 2,067 |
| | | $9,737 |

| | | |
|---|---|---|
| C. Diff't counter marks. 15 per cent. | 134 zo., W. R., 150 lbs. nett each, 201 ql. quill bark, (quina cannso,) W. R., 20,517, 417, at $47 qy. - - - - - - | 9,447 |
| | Charges.—Consul's certificate - - | 1 |
| | Commanded. | $59,185 |

E. E.

Arica, January 25, 1849.

Ppr. GEORGE T. PINTO & CO.,
THEODORE POSSEL.

| | | |
|---|---|---|
| 69,102 | inv. | 68,100 |
| 3,966 | | 3,700 |
| 20,517 | | 20,100 |
| 92,585 | | 92,100 |
| | Diff. wt. | 1,326 |
| | | 93,426 |
| | W. R. | 92,585 |
| | Loss | 841 |

Quality approved.

DAVID STEWART, M. D.,
*U. S. special ex'r, port Baltimore.*

27th Sept., 1849.

*Consular certificate.*

On the twenty-fifth day of January, eighteen hundred and forty-nine, before me, George Hodges Nugent, British vice-consul at the port of Arica, personally appeared Mr. Theodore Possel, one of the firm of Juge T. Pinto & Co., merchants, and subscribers to the annexed invoice, and made oath that the said invoice contains a true and faithful account of the actual cost of the goods therein mentioned, and of all charges thereon, and that no discounts or drawbacks are contained in the said invoice, but such as have been actually allowed on the same. And I further certify, that the value of eight reals of the currency of the republic of Peru is ninety-two cents, estimated in Spanish or American dollars.

Given under my hand and seal of office, at the British Consulate at Arica, this twenty-fifth day of January, in the year of our [SEAL.] Lord one thousand eight hundred and forty-nine.

G. H. NUGENT,
*H. B. M. vice-consul.*

*Bill of lading*.

| | | | | |
|---|---|---|---|---|
| J. T. P. Q | 3. | 50 | zarrones. | |
| R | 3. | 50 | " | |
| S | 3. | 50 | " | |
| T | 3. | 50 | " | |
| U | 3. | 50 | " | |
| V | 3. | 50 | " | |
| W | 3. | 50 | " | |
| X | 3. | 50 | " | |
| Y | 3. | 50 | " | |
| Z | 3. | 04 | " | |
| | | — | | 454 zurrones. |
| C. L | | 50 | " | |
| M | | 50 | " | |
| N | | 34 | " | |
| | | — | 134 | " |
| J. P. O | | | 26 | |
| | | | — | |
| | | | 614 | zurrones. |

Do. Harvey. Meastre del buque Sn. Joseph, anclado en este puerto, y proximo á seguir viage al de Baltimore, con escala en Callao, declaro que hé recibo á bordo de dicho buque, bajo partida de registro de Payta y Valparaiso los Sres. Jorge T. Pinto & Co., seis ciento catorce zurrones de cascavilla, peso de ciento cincuenta libras neto cada uno no es permitido que el buque cargue salitre el capitan pueda trasbordan la cascavilla en Valparaiso á otro buque per su cuenta, siempre que val operacion no ocasione una de mora en la salida para Estados Unidos, de mas que ocho dias, enjuto y bien acondicionado, con la marca y numero del margen: en cuya disposicion lo hé de entregar en el puerto de mi destino illegado, que sea felizmente á la orden del Señor Don Edwin Bartlett, New York, quien me satisfara hecha que sea la fiel entrega, por flete dos pesos setenta y cinco, centavos per cada zurron. A cuyo exacto complimiento, me obligo con mi persona y bienas, y particularmento con el espresado buque.

Fech. en Arica, Enero 25 de 1849.

Contents and weight unknown to

JOSEPH HARVEY, Jr.

And the call of the official appraisers for said bill, which was gratified.

*Call for the bill of lading*.

The United States appraisers request Messrs. Birckhead & Pearce will send them the bill of lading of the bark entered by them, per barque St. Joseph, from Arica.

October 1st, 1849.

Messrs. BIRCKHEAD & PEARCE, Baltimore.

And likewise the appraisement and return to the collector of the said official appraisers of the third of October, 1849.

*Appraisers' report to the collector*.

APPRAISERS' OFFICE,
BALTIMORE, *October* 3*d*, 1849.

The undersigned report to the naval officer an addition to E. Bartlett's, of New York, invoice of bark, per barque St. Joseph, from Arica, entered by Birckhead & Pearce, on 21st ult., viz:

| | | | |
|---|---|---|---|
| J. T. P. & Co. 454 seroons flat bark, 681 quintals at $10 58 is - - - | $7,204 98 | | |
| J. P. 26 seroons flat barque, 39 quintals at 14.82 $\frac{63}{100}$ - - - - - - | 578 22 | | |
| | $7,783 20 | | |
| Commission, 2½ per cent., is - - - | 194 58 | *a* 92 | $7,339 56 |
| Peruvian currency - - - - | $7,977 78 | | |
| Duty, 15 per cent., is - - - - | | | $1,100 93 |

M. McBLAIR.

E. Bartlett, N. York, per St. Joseph, entered by Birckhead & Pearce 454 seroons flat bark, 681 quintals at $70, is - - - $47,670 00
Commission 2½ per cent. - - - - - - 1,191 75

$48,861 75

The 13 seroons of bark per George & Henry, which cost 80 cents per pound, produced 2 $\frac{76}{100}$ per cent. of quinine.

The above bark, per St. Joseph, is invoiced at 70 cents, and produced 2 $\frac{78}{100}$ quinine per cent., and consequently ought to have been invoiced - - - - - - - - - - - - 80 $\frac{58}{100}$

Difference - - - - - - - - - 10.58

If this addition be made it will *it will* stand *of* following:
681 quintals at 10.58 per quintal, is - - - - - $7,204 98
Commission, 2½ per cent., - - - - - - 180 12

$7,385 10

J. P. 26 seroons invoiced at 53 cents produced 2 $\frac{84}{100}$ per cent. of quinine; in proportion to above, it ought to be valued, viz:
39 quintals at 14.82 $\frac{63}{100}$ - - - - - - - - $578 22
Commission, 2½ per cent., - - - - - - - 14 46

$592 68

7,977 78 *a* 92 is 7,339 56 U. S. cur.
Duty, 15 per cent., is $1,100 92. Peruvian currency $7,977 78.

And the letter of the collector to the plaintiff's agents of the 4th of October.

*Letter from the collector to B. & P., 4th Oct.*, 1849.

CUSTOM-HOUSE, COLLECTOR'S OFFICE,
BALTIMORE, *October* 4, 1849.

GENTLEMEN: You are hereby informed that the appraisers have this day made their report on your invoice bark, per St. Joseph. The law

requires that application for re-appraisement, if desired, be made within a period not longer than the day succeeding the notice of such appraisement.

Very respectfully,
Your obedient servant,
GEO. P. KANE, *Col.*

Messrs. BIRCKHEAD & PEARCE.

And the letters of said agents to the collector, of the 5th and 6th of October.

*Letter of B. & P. to the Collector, 5th October,* 1849.

BALTIMORE, *October* 5, 1849.

GEO. P. KANE, esq., *Collector of the Customs.*

SIR: We are in rec't of your note informing us that the appraisers have made a report on the bark per St. Joseph; and on inquiry we learn that the appraisers have in that report raised the value, so as to subject the importer to the penalty. Before deciding what course we shall adopt in this matter, we would be obliged if you would inform us their grounds upon which the value of said bark has been raised.

Very respectfully,
Your obedient servants,
BIRCKHEAD & PEARCE.

GEO. P. KANE, esq., *Collector of the Customs, Baltimore.*

*Letter of B. & P. to the Collector, 6th October,* 1849.

BALTIMORE, *October* 6, 1849.

GEO. P. KANE, esquire,
*Collector of the Customs for the port of Baltimore.*

SIR: Being informed by you that the United States appraisers have raised the value of the 614 seroons of bark entered by us, received per barque St. Joseph, we do hereby protest against the same, and request you to have the case submitted to merchant appraisers, as required by law.

We are, sir, with much respect, your most obedient servants,
BIRCKHEAD & PEARCE.

And likewise read the call made by said appraisers on the plaintiff's agents on the 6th of October.

*Call by the Appraisers for papers, &c.*

APPRAISER'S OFFICE, BALTIMORE, *Oct.* 6, 1849.

GENTLEMEN: In relation to your appeal in the case of Mr. E. Bartlett's importation of bark per barque St. Joseph, from Arica, we beg leave respectfully to notify you that we require of this gentleman the production of all correspondence, and letters and accounts in his possession relative thereto, and that he shall make a deposition before the

collector of New York, that the papers he sends are all the documents he has received relating to this shipment.

Very respectfully,

M. McB.
H. W. E.

Messrs. BIRCKHEAD & PEARCE, *Baltimore.*

And likewise the plaintiff's two letters to his said agents, dated the 11th of October, 1849.

*Letter from E. Bartlett to B. & P., 11th October, '49.*

NEW YORK, 11*th October*, 1849

Messrs. BIRCKHEAD & PEARCE, *Baltimore.*

DEAR SIRS: I have yours of 9th and 10th inst. I return the deb. certificate endorsed. In looking more carefully to the requisition of your appraisers of bark per St. Joseph, I find that I shall have to have copied and translated a mass of correspondence from January last, when it was shipped, to August, (for reference to it is made in all my letters from Pinto & Co. and Alsop & Co.,) and, in order the more fully to explain Pinto & Co.'s mode of invoicing their bark, I shall have to present a series of documents commencing in 1847 with their contract with the Bolivian Government, proving its actual cost to be about $60 per ql.; all these are necessary to make out my own case, and I am unwilling to present any thing less than all the documents. I do not see, however, what use they can be of at present to the appraisers, who have already made up their valuation of the bark, and made a return to the collector. I shall therefore defer the presentation of my documents for another tribunal, and not to lose more time in delivering the bark to the purchasers, I wish you to inform the collector that by my instructions your appeal is withdrawn, and that you are prepared to pay under protest whatever duties may be exacted on the bark. You will then please send to me in bond what has been so directed, and deliver the remainder as already ordered. At leisure we can then test the question of this exaction.

The appraisers have been misinformed of the value of bark at Arica in Jan'y last. After the large sales I made here in March and April were known, it never rose there above 75 *a* 80 c., and if any small parcels were at any time smuggled to the coast and sold at that or even higher prices, it was no guide to its value.

If a resort to the courts can be avoided by having the valuation fixed at a rate not imposing the additional duty of 20 per cent., I shall be glad, for I have no disposition to engage in a law suit. My immediate want, however, is the bark, and I will take my chance of having justice done by paying all that is now asked under protest. You can draw on me at sight for what funds may be required

I credit you $111 03 for proceeds of C. Keener's dft. of $114 96.

Truly, yours,

EDWIN BARTLETT.

Private.

*Letter from E. Bartlett to B. & P., 11th October, '49.*

NEW YORK, 11*th Oct.*, 1849.

DEAR SIRS: One reason I have for taking the course directed in my letter of this date is, that my counsel informs me that I can more easily get the bark case into court before the appeal appraisement be resorted to, than afterwards. Some of our judges have held that an appeal appraisement is final and conclusive.

Yours, truly,

EDWIN BARTLETT.

Messrs. BIRCKHEAD & PEARCE, *Balto.*

And likewise the letter of the said appraisers of the 12th of October to plaintiff's agents.

*Letter from the Appraisers to the plaintiff's agents* 12*th October*, 1849.

APPRAISER'S OFFICE,
*Port of Baltimore*, 12*th October*, 1849.

GENTLEMEN: We herewith return the letter of Mr. Bartlett, which we have carefully perused and considered, and beg leave to state, that under the orders of the treasury, in a similar case known to you, we cannot make any alteration in the addition made to the invoice of bark per barque St. Joseph, from Arica.

We are, very respectfully, gentlemen, your obedient servants,

M. McBLAIR.
H. W. EVANS.

To Messrs. BIRCKHEAD & PEARCE, *Baltimore.*

And likewise plaintiff's letter of the 26th of October, 1849.

*Letter from E. Bartlett to the Secretary of the Treasury*, 26*th October*, 1849.

NEW YORK, 26*th October*, 1849.

SIR: About a month since I imported into Baltimore, in the barque St. Joseph, from the port of Arica, in Peru, 614 bales of bark of various qualities, as per copy of invoice herewith. The original invoice with consular certificate annexed was presented by my agents, Messrs. Birckhead & Pearce, and is now on the files of the custom-house there. The appraisers in Baltimore reported to the collector on the 3d instant an additional value on two of three qualities of bark of over ten per cent., and the collector has demanded the duties on the appraised value on such part as has been entered for duty, and an additional duty of 20 per cent. on the entire estimated value of the two parcels thus raised by the appraisers. I have directed this to be paid under protest, not doubting that an appeal to you would lead to a reconsideration and reversal of the appraisement. I requested the ap-

praisers to inform me of the mode adopted to ascertain the value of the bark, but they declined informing me, and I can only vaguely conjecture from some of their remarks that it has been by analysis under instructions from the Treasury Department. This may be the best mode of ascertaining its intrinsic value, having a fixed standard as a guide, but is not, I think, in accordance with the law, and I am quite sure it is not in accordance with the custom of the place where it was shipped; for, after an intimate acquainance with the trade from Peru and Bolivia, of twenty years, including a residence of more than ten years in Peru, I have never [known] a single instance of the value of bark being ascertained by analysis. It is always bought and sold by simple inspection. Sometimes the best judges are deceived, and at other times fortunate purchases are made, where the bark yields more sulphate of quinine, for which it is principally used, than estimated. Hence, if subjected to a valuation by analysis here, a discrepancy may be found in the invoices leading to false conclusions, and, as in this case, to unjust suspicions and heavy penalties.

In the last three years I have received, from the same parties who shipped the bark per St. Joseph, upwards of eight thousand bales of this article, invoiced at various prices, from thirty-five to seventy dollars per quintal, according to quality. I have never received a bale of any quality invoiced at a higher rate than $70 per quintal, which is the price in the invoice per St. Joseph, and which the appraisers have raised to upwards of $80 per quintal.

The shippers of the bark per St. Joseph are contractors with the Bolivian government for all the bark cut in the forest of Bolivia, and the actual cost to them, including the bounty paid to government, is less than sixty dollars per quintal for first quality, such as is invoiced at $70 in the invoice per St. Joseph; at my own suggestion, in order to avoid any question of its actual value, they raised their invoice price to more than fifteen per cent. above actual cost. Their shipments to me have been in large parcels, generally of 500 or more, and up to 2,000 bales; and if at any time any small parcels may have been smuggled out of Bolivia and sold on the coast of Peru, at a price above $70, it would be very unfair to take that as a guide or standard of value for larger received parcels.

These remarks are applicable to the *to the* increased appraisement of the bark on which the import duty has been assessed, but are of more important consideration, when the rigid rule of the law exacts more than a double duty on the whole appraised value of the invoice.

The framers of the present tariff, in imposing an additional duty of 20 per cent. on all goods raised by the appraisement above 10 per cent. on the invoice price, intended this additional duty as a protection to the Government against intentional undervaluations. I do not suppose the appraisers themselves have the slightest suspicion that in this case any such design was entertained, and I feel confident that, if the highly honorable character of the shippers, who are the sole owners of the property, were known to you, none would rest on your mind.

I submit this matter to you in the hope that you may ascertain the facts from the collector at Baltimore, and give such instructions as will authorize him to return to me the excess of duty above that which would have accrued on the original and true invoice of the bark.

Respectfully, your obedient servant,

(Signed) EDWIN BARTLETT.

Hon. WM. M. MEREDITH,
*Secretary of the Treasury, Washington.*

And the reply of the Secretary, of the 14th of February, 1850.

*Letter from the Secretary of the Treasury to G. P. K., 14th February*, 1850.

(Copy.)

TREASURY DEPARTMENT, *February* 14, 1850.

SIR: The attention of this Department has been directed to the question presented in a letter of 25th October last, with its enclosures, arising on the importation into the port of Baltimore of 480 seroons of bark per barque St. Joseph, from Arica, 22d September, 1849, entered by Birckhead & Pearce, for Mr. Edwin Bartlett, of New York. It appears from the report of the United States appraisers, dated 20th October last, that the dutiable value of the article in question having been estimated and sustained by them in conformity with law, it was found that the appraised value exceeded by 10 per cent., or more, the value declared in the entry, and that an appeal from this appraisement, entered by the importer, was subsequently withdrawn by him. Under these circumstances it necessarily follows, that the original appraisement, made by the United States appraisers, is to be taken as final and conclusive in determining the dutiable value, and that such value, exceeding by ten per cent. or more the value declared in the invoice and entry, the "additional duty" of 20 per cent. as provided in the 8th section of the Tariff act of 1846 is chargeable under the law, in addition to the regular tariff rate of 15 per cent. ad valorem, levied on the enhanced value of the article in question. A supplemental question in reference to this importation having been submitted to the Department, under date of 7th instant, namely, whether the importer is not entitled to the return of that portion of the "additional duty" paid on that part of the importation withdrawn from warehouse by the importer, and exported from the United States, I have to advise you, that upon a careful examination of the subject, it is the opinion of the Department that the "additional duty" imposed in all cases of undervaluation, to a certain extent, was intended, and must be considered, as entirely distinct in character and object from the regular tariff rates of duty, exclusively in view when the laws regulating the drawback of duties were enacted; and that, consequently, no return of such "additional duty" could be legally made as debenture. It is thought proper to add, that the prac-

tice heretofore pursued under the instructions of the Department, has been uniformly governed by these views.

Very respectfully,

(Signed) W. M. MEREDITH,
*Secretary of the Treasury.*

To GEO. P. KANE, esq.,
*Collector, Baltimore.*

*Letter from Secretary of the Treasury to B. & P., 14th Feb.,* 1850.

(Copy.)

TREASURY DEPARTMENT,
*February* 14, 1850.

GENTLEMEN: The decision of this Department on the question referred to in your letter of 15th October last, addressed to the collector of Baltimore, arising on an importation of bark, per barque St. Joseph, entered by you as agents of Mr. Edwin Bartlett, of New York, has been transmitted to the collector of Baltimore, to whom I beg to refer you for further information. Very respectfully,

Signed, WM. M. MEREDITH,
*Secretary of the Treasury.*

To Messrs. B. & PEARCE, Balt.

The plaintiff then read in evidence the commission taken in Peru, (except the voluminous contracts in Spanish, A and B, of which, by consent, the material portions may be inserted in the record.)

EDWIN BARTLETT
vs.
GEORGE P. KANE.

*Agreement.*

In the circuit court of the United States, in and for the Maryland district.

It is agreed that a commission shall issue in the above case to Fayette M. Ringgold, consul of the United States at Arica, in Peru, to take testimony in the above case, on the part of the plaintiff.

BROWN & BRUNE,
*For plaintiff.*
Z. COLLINS LEE,
*U. S. Att'y for Md.*

True copy.

THOS. SPICER, *Clerk.*

2291.
17

*Commission.*

THE UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

To Fayette M. Ringgold, consul of the United States at Arica, in Peru, esq., greeting.

Be it known, that you are appointed commissioner to examine evidences in a cause, now depending in the circuit court of the [SEAL.] United States, for the fourth circuit, in and for the Maryland district, between Edwin Bartlett, plaintiff, and George P. Kane, defendant; therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the plaintiff or defendant; and that you examine them upon their corporal oaths, to be by you administered upon the holy evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same with this commission, closed under your hand and seal, to the said circuit court, with all convenient speed.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-one.

THOS. SPICER,
*Clerk circuit court.*

Issued 20th December, 1851.

*Commissioner's oath.*

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses, produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to and left with you by either party. So help you God.

FAYETTE M. RINGGOLD.

The above oath was administered by me, this third day of February, in the year of our Lord one thousand eight hundred and fifty-two, to Fayette M. Ringgold, consul of the United States, commissioner within named.

G. H. NUGENT,
*British vice consul, Arica.*

*Clerk's oath.*

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the depositions of all and every the witness and witnesses, produced before and examined by the commissioner named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioner to take, write down, and transcribe the said depositions, or any of them. So help you God.

*Interrogatories on the part of the plaintiff.*

EDWIN BARTLETT }
vs. }
GEORGE P. KANE. }

In the circuit court of the United States, in and for the Maryland district.

Interrogatories to be propounded to witnesses, to be examined on the part of the plaintiff.

1. Have you any knowledge of a consignment of Peruvian bark to Edwin Bartlett, of New York, by the barque St. Joseph, from the port of Arica, in the year 1849? If yea, state what was the quantity and quality of the bark so consigned, and whence obtained, and to whom it belonged; and state also the time when the St. Joseph sailed from Arica, and for what place was she ultimately bound.

2. Have you any knowledge in regard to a contract which Messrs. Pinto & Co. had in the year 1849, or previously with the Bolivian Government, giving the said firm the exclusive privilege of cutting or exporting bark from Bolivia? If yea, give the date, and state all the terms of such contract, and whether the bark exported, by the St. Joseph, was procured under such contract; if such contract was in writing, produce the original to be annexed to your answer, or if such contract is recorded or retained in the public offices or archives of Bolivia, file with your answer a copy thereof, duly certified under the seal of State of Bolivia. If for any reason you cannot produce the original or a certified copy, state the reasons for their non production.

3. State what was the cost or price to Messrs. Pinto & Co., under the contract referred to in the previous interrogatory, of procuring bark of the various qualities, from the forests of Bolivia, at the time when the St. Joseph sailed from Arica, and for six months previously, including, in such cost or price, all the items of expense, from the first cutting thereof to the placing of the same on shipboard at the place of shipment.

4. State what was the highest price which bark of the different qualities had brought in the principal markets of Bolivia and Peru, at the period between the exportation of the bark from Bolivia and its shipment at Arica, or about that time, and the quantities of the article so

sold; and state whether the bark does not bear a higher price when sold in small quantities; state your means of knowledge on these points, and annex to your answer copies of invoices of any shipment from Arica, or other principal markets of Peru, for bark, at about the time the St. Joseph sailed.

5. State, if you know, particularly and fully, the mode or process of preparing the bark for market, from the cutting of the tree in Bolivia to the shipment of the bark; what time is required to dry the bark, and what agency or means is resorted to for the purpose. State also the agency or connexion of Messrs. Pinto & Co., or those employed by them under the contract referred to in the second interrogatory, with the various process of preparation of the bark for market.

6. State in what country the port of Arica is situated, and whence the bark shipped from that port is obtained. State also whether Bolivia has any, and what, ports, and where situated, and whether any bark is or can be shipped from the port or ports of Bolivia. State also whether there are any, and what, treaties between Bolivia and Peru, in regard to the exportation of bark and other produce of the former country through the ports of the latter.

7. State whether, at the time the St. Joseph sailed from Arica, there could have been any Bolivian bark in that port, except what belonged to Pinto & Co., unless it had been smuggled from Bolivia without paying the export duty to that country. State also, if not already stated, the amount of such export duty; and state also whether there were not then small parcels of bark from Bolivia in Arica which had been smuggled into Peru.

8. State any thing else which you may know, which may tend to prove that the invoice price of the bark per St. Joseph, that is to say, 454 seroons of flat bark, (quina tabla,) first quality, at $70 per quintal; 26 seroons flat bark, second quality, at $53 per quintal; and 134 seroons quill bark, (quina canato,) at $47 per quintal, was not undervalued, or which may otherwise be of advantage to the plaintiff in this case.

BROWN & BRUNE,
*Att'ys for plaintiff.*

Cross interrogatories not desired by me,

Z. COLLINS LEE,
*For defendant.*

True copy: THO. SPICER, *Clerk.*

*Return of commission.*

To the honorable the judges of the circuit court of the United States, for the fourth circuit, in and for the Maryland district.

I, the undersigned commissioner, named in the commission hereto annexed, having met and opened the same at Tacna, in the republic of Peru, do hereby certify and return—

That, on the third day of February, in the year of our Lord 1852, I duly qualified myself for the execution thereof, by taking the oath thereby prescribed for me, before one duly authorized to administer

oaths and affirmations; after which my proceedings in the execution of the same commission were as follows:

John Stewart Jackson, of Tacna, in the republic of Peru, aged twenty-nine years, or thereabouts, was produced before me, on the 11th day of February, in the year of our Lord 1852, in the city of Tacna, and was by me duly sworn to make true answers to all the interrogatories annexed to said commission, and therein to tell the truth, the whole truth, and nothing but the truth; after which he made answer to such interrogatories as follows:

And I do further certify and return, that said witness, examined by me as aforesaid, did, in my presence, subscribe his signature to his examination, and that the expenses of executing said commission are as follows: Commissioner's fees $200 00, witness fees $ ; total $200 00.

In witness of all which I have hereunto set my hand and seal, at the city of Tacna, in the republic of Peru, this thirteenth day of [L. S.] February, in the year of our Lord one thousand eight hundred and fifty.

FAYETTE M. RINGGOLD,
*U. S. consul.*

TACNA, PERU, *Feb.* 11, 1852.

Evidence taken by the commissioner appointed by the circuit court of the United States, in and for the Maryland district, in the case of Edwin Bartlett vs. George P. Kane.

I, John Stewart Jackson, of Tacna, Peru, do solemnly swear, on the holy evangely of Almighty God, that, in the case of Edwin Bartlett vs. George P. Kane, and to the interrogatories about to be put to me by the commissioner in said case, I will tell the truth, the whole truth, and nothing but the truth. So help me God.

J. STEWART JACKSON.

I, Fayette M. Ringgold, consul of the United States of America for the port of Arica, Peru, and commissioner in the case of Edwin Bartlett vs. George P. Kane, now pending in the circuit court of the United States, in and for the Maryland district, do hereby certify, that the above oath was administered by me, this eleventh day of February, in the year of our Lord one thousand eight hundred and fifty-two.

Given under my hand, and seal of my consulate, date above mentioned.

[L. S.]

FAYETTE M. RINGGOLD,
*U S. consul.*

*Deposition of J. Stewart Jackson.*

Answer to interrogatory 1st.

I have a knowledge of a consignment of bark to Mr. Bartlett, per St. Joseph, in the year 1849; it consisted of 450 seroons Tabla.

26 do Charquecilla.
134 do Canuto.

But the term Peruvian as applied to this bark is incorrect. The bark per St. Joseph was Bolivian, and belonged to Pinto & Co.

The St. Joseph sailed from Arica the 27th of January, 1849, for Callao and other ports to leeward, and thence to Valparaiso, and ultimately to Baltimore.

Answer to interrogatory 2d.

The fact of Pinto & Co.'s contract with the Bolivian government for the exclusive privilege of purchasing from the cutters and exporting bark out of that country was notorious; the date of Pinto & Co.'s contract for that kind of bark known by the name of tabla, was the seventh of April, 1845, and had been running nearly four years. The terms of said contract were the exclusive privilege of exporting (4000) qqt. tabla, annually, for the period of five years, on the payment of one hundred and nineteen thousand dollars (119,000) annually as duties to the Bolivian government, equal to twenty-nine dollars seventy-five cents ($29 75) per quintal.

The annexed document, marked (A,) is a certified copy of the original contract existing in the archives of the Bolivian government. It would be impossible to obtain the original contract, but the annexed certified copy has all the force of an original contract.

The annexed document, marked (B,) is a certified copy of a subsequent contract made by Pinto & Co. with the Bolivian government, dated ninth of February, 1846, in which Pinto & Co. were allowed to export five hundred (500) qqt. yearly, of that kind of bark denominated canuto, on the payment to the Bolivian government of ten dollars ($10) per quintal, half in cash and half in government paper; which at that time [was] worth thirty-five (35) per cent., making the total duty equal to six dollars seventy-five cents ($6 75) per qqt. A similar contract, with the same duty as the last mentioned, was made about the same period for a similar quantity of bark denominated charquecilla, of which I can give no copy, and the attainment of [the] same would be attended with delay, great trouble, and needless expense, the government being now in entirely different hands from what it was at that time, and this through a series of revolutions. The bark per St. Joseph was procured under the above mentioned contracts.

Answer to interrogatory 3d.

In the contract between George T. Pinto & Co. and the Bolivian government, the price paid to the cutters of bark was not stipulated, but it was notorious that before their contract commenced it was sixteen dollars ($16 00) tabla. Pinto & Co., with the intervention of the prefect of La Paz established the price from the commencement of their contract at twenty dollars ($20 00) tabla, sixteen dollars ($16 00) for charquecilla, and twelve dollars ($12 00) for canuto, which prices continued to be paid until August, 1848.

From that month until the commencement of 1849, they paid for—

| | | |
|---|---|---|
| Tabla | | $25 00 |
| Charquecilla | | 18 00 |
| Canuto | | 14 00 |

and these facts were publicly known. The cost, therefore, to Pinto & Co., of the bark per St. Joseph was as follows, for—

| | | |
|---|---|---|
| Tabla, paid cutters | | $25 00 |
| Duties per contract | | 29 75 |
| Packing | | 1 00 |
| Freight to Arica | | 3 37½ |
| Agency for shipping and petty expenses | | 37½ |
| | | $59 50 |
| Charquecilla paid cutters | $18 00 | |
| Duties per contract | 6 75 | |
| Additional expenses same as above | 6 00 | |
| | | $30 75 |
| Canuto paid cutters | $14 00 | |
| Duties per contract | 6 75 | |
| Expenses same as above | 6 00 | |
| | | $26 75 |

Answer to interrogatory 4th.

Bolivia was not an open market in which bark could be purchased at the time alluded to. Pinto & Co., being then the only purchasers at a stipulated price, as was granted to them by the terms of the contract.

Tacna is the principal market in Peru in which bark is ever to be found, and when found there (that is, of the genuine quality, and similar to the 614 seroons now in question) it must always have come from Bolivia, either by being smuggled into Peru, or after having paid the duty to the government of Bolivia on passing out of its territories.

Pinto & Co. sold none of their bark in Tacna at that time, with the exception of one parcel of sixty (60) seroons they sold in March, 1847, consequently all bark found there during the years 1847 and 1848, must have been smuggled. The quantity of bark thus offered for sale was necessarily small, and never in large parcels; often not more than five to ten quintals, and rarely passing a hundred and fifty (150) quintals at a time.

The whole quantity of genuine bark sold at Tacna for the six months previous to the sailing of the St. Joseph did not exceed a hundred and twenty (120) quintals.

Owing to this class of operations there was no fixed market rate for Bolivian bark in Tacna. Many persons purchasing on the frontier comparatively at a much lower price. From October, 1848, to December, 1849, I was the chief shipper of bark.

In October, 1848, I shipped six (6) quintals of Bolivian tabla, the best costing sixty (60) dollars in Tacna, and ten (10) quintals Canuto, which cost thirty-five ($35) dollars per quintal; in November, 1848, I shipped six (6) quintals, fine tabla which cost sixty-five ($65 00) to seventy ($70 00); in April, 1849, I shipped a hundred and forty-nine (149) quintals on account of Francisco Lambreto; and a hundred and thirty-five (135) quintals on account of Modesto Bagadre, and in June, 1849, ninety-nine (99) quintals on account of Modesto Bagadre; all these fine tabla, and contracted for placed beyond the frontier of Bolivia, at a price not exceeding fifty dollars ($50 00) per qql.; and in the case of Modesto Bagadre, to my own knowledge the contracting price was forty-three ($43 00,) dollars; the date of contract was between November, 1848, and January, 1849.

At the same time, however, that I purchased below seventy ($70 00) dollars, other parties paid from seventy ($70 00) to ($80 00) dollars, but I believe none was shipped between 30th July, 1848, and 31st January, 1849, which cost more than the latter price.

But this is no criterion of the market rate, as each bought according to his necessities, and his knowledge more or less perfect of the probabilities of the durability of Pinto's contract with the government, which, at that time, was doubtful, and there was not sufficient bark offered for sale to establish a market rate. I may also state, that the prices paid in Arequipa, the only other market in Peru to which Bolivian bark can find its way, ranged lower than in Tacna, not only at the close of the year 1848, but during nearly the whole of 1849.

Prices subsequently advanced in April, 1849, to eighty ($80 00) dollars; in May and June they were at seventy-three ($73 00) to seventy-eight ($78 00) [dollars;] August and September, eighty ($80 00) to eighty-two ($82 00;) December, 1849, eighty-eight ($88 00) to ninety ($90 00;) February, fifty, ninety ($90 00) to a hundred ($100 00;) and in April, 1850, a hundred and ten ($110 00) to a hundred and twenty ($120 00.) Owing to a corresponding advance in the markets of Europe and the United States, small parcels of bark have generally brought better prices than larger ones; in consequence, growing out of the very intelligible working of all commercial operations, that prices are reduced in proportion to the magnitude of the operation.

If Pinto & Co.'s shipment per St. Joseph has been offered in one entire parcel at the time it *embarking*, I do not believe it would have brought more than it was invoiced at, if as much.

My means of knowing what I have stated before are from having been in Tacna at the time the shipment per St. Joseph was made. I was manager of a commercial house there at that time, and have been ever since; and I state nothing that may not, and ought to be within the knowledge of any merchant in the place.

Answer to interrogatory 5th.

The process of preparing the bark is simply by drying it in the sun;

it is brought by the cutters of it, wholly Indians, from the recesses of the forests of Bolivia, and is carried to La Paz, where it is sold, sorted, and packed. It undergoes no other further process of sorting or packing after leaving La Paz, nor does it incur other expenses (except export duties to the government of Bolivia) than the cost of transit to the shipping port. And before the present treaty with Peru a small transit duty. This, together with sorting and packing, I have already stated to be six dollars, ($6.00.)

Pinto & Co. had no other relation with the cutters of bark than being obliged to buy their bark, paying them a price arranged by the intervention of the prefect of La Paz. That price being without reference to any advance or fall in foreign markets.

The contract of the Bolivian Government with Pinto & Co., or with whomsoever else might have taken it, was intended as well to protect the bark cutters as to make the revenue, arising from the export of bark, more secure.

Answer to interrogatory 6th.

The port of Arica is in Peru; all the genuine bark shipped there comes from Bolivia; other descriptions shipped at Arica are from the mountains and forests of Peru, but they are of inferior quality, much less value, and the quantity is small.

The only port belonging to Bolivia is Cobija, through which bark is seldom or never shipped, owing to the distance from La Paz, and the natural impediments to land carriage.

There was no commercial treaty existing between Bolivia and Peru at the time of the sailing of the St. Joseph, but the transit of merchandise to and from the former across the territories of the latter, to and from the port of Arica, was regulated by decrees of the Peruvian government. By the present treaty, in force since January, 1850, the transit is free.

Answer to interrogatory 7th.

There could not have been any Bolivian bark at Tacna or Arica at the time the St. Joseph sailed, except what belonged to Pinto & Co., which had paid to Bolivia the export duty, or what had been smuggled. To the best of my knowledge there were only thirty-three (33) quintals smuggled bark in Tacna or Arica at that time, which were shipped in February, 1849.

Answer to interrogatory 8th.

I have already stated that I do not think the bark per St. Joseph was undervalued. It certainly did not cost Pinto & Co. so much, nor do I think it could have been sold for more at the time of shipment than it is set down at in the invoice.

With respect to Pinto & Co.'s contract I may also state that it was sold by the Bolivian government at auction. That the price estab-

lished by Pinto & Co. and paid to the cutters, was more than the previous rate. That the price so established was not only considered high at the time, but the whole speculation was looked upon of a very doubtful character on the score of its results, involving as it did, on the part of Pinto & Co., an obligation for about a million and a half of dollars, ($1,500,000) and having all the hazard to run of the political commotions, say nothing of the political bad faith so common in these countries. By the permanency of the Bolivian Government, however, and their own excellent management, Pinto & Co. succeeded in so sustaining their contract as to give an impulse to the prices of bark beyond the Bolivian frontiers, which they had never before received. In this then consisted their profit. It was an effect produced on the foreign market by the successful working of their speculation within the Bolivian territory, and to them (Pinto & Co.) and with reference to the actual cost of the commodity and the locality of its production, Tacna was just as much a foreign market as New York or London would have been. When their bark had reached Tacna, or when it had crossed the frontiers of Bolivia, they had derived all the privileges which their contract conferred upon them, viz., that of being the exclusive purchasers and exporters of bark, and they did not sell in Tacna only because they thought New York the better market of the two. They would not accept seventy dollars ($70.00) in Tacna, because they believed the chances were in favor of their doing better in New York, and for the sake of speculative advantages they were willing to run the risk of having to accept less at the latter place.

If Pinto & Co. had sold in Tacna, instead of consigning it to one party in the former market, they would not have been able to sustain the prices. It was the making a monopoly of the article, both in Bolivia and the United States, which caused the rise in price. At the time of the sailing of the St. Joseph, their contract with the Bolivian Government was held under a very precarious tenure. It was generally believed that it would be arbitrarily annulled, and the feeling was that free trade would be established. This actually took place in March of the same year, (1849.) There was no one but myself offered more than seventy dollars, ($70,) and that in this case free trade would not last. It is very difficult to obtain smuggled bark from Bolivia; and as Pinto & Co. did not sell in Tacna, higher prices were naturally paid to parties engaged in that traffic, and quite out of proportion to the actual cost. Generally, however, it is the case in Tacna, the parties in the interior who had direct transactions with the smugglers did not sell in Tacna, but consigned to a foreign market under advances obtained from the merchant. So little was offered for sale that it commanded a much higher rate than it could have been obtained at in larger quantities. The fact of only one hundred and twenty (120) being sold in six months, ending 31st January, 1849, and none being shipped in three months of same period, proves what I have said. Pinto & Co. on one occasion, during political difficulties between the Governments of Peru and Bolivia in the year 1846, sent to Cabya for shipment about

eight hundred (800) quintals Bolivian bark, which cost them, placed on board, about forty dollars, ($40 00,) as they paid ten dollars ($10 00) duty instead of thirty ($30 00,) owing to the allowance made by the Government to compensate them for the difficulties attending said shipment.

If they had paid the same duties, same price to cutters in La Paz as per parcel per St. Joseph, with the additional charges, carriage to Cabija, packing and shipping expenses about ten dollars, ($10 00,) it would have cost them on board at Cabija sixty-five dollars, ($65 00 ) I have not included in this, or any of my previous calculations, the cost of Pinto and Co's. establishment in La Paz. But I do not conceive, in any case, it would amount nearly to the difference between the invoice amount and actual cost of the bark shipped. If, then, Pinto & Co. had shipped through the only port of Bolivia, Cabija, the bark, at the time the St. Joseph sailed, would, under the most unfavorable circumstances, have cost them less than seventy dollars ($70 00) on board. In addition to what I have stated, to the best of my knowledge the price paid by Laubirta for the parcel mentioned in my answer to the 4th interrogatory, was forty-seven ($47 00) dollars placed in Puno, and the average of all contracts and purchases made in the three months previous to the sailing of the St. Joseph in this department of Peru, was much below seventy dollars ($70 00) on board.

J. STEWART JACKSON.
[SEAL.] FAYETTE M. RINGGOLD,
*U. S. Consul.*

*Admissions in regard to Spanish contracts.*

BARTLETT vs. KANE.

Memorandum of the principal matters contained in the contracts marked A and B, and referred to in the bill of exceptions.

It is admitted that, on or about the 24th of February, A. D. 1845, Pinto & Co. became contractors with the Bolivian Government, for the term of five years, in reference to the export duties upon bark to be sent out of that republic, for the yearly sum of one hundred and nineteen thousand dollars, payable quarterly, with a payment of five thousand dollars in cash. The said contract to take effect from the 7th of March of said year, and Pinto & Co. under it not to export more than four thousand quintals of said bark annually. The same to be exported, exclusively, through the city of La Paz, the town of Viacha, and of Valzas de Nasacasa, but to be cleared from the city of La Paz alone. That any portion of said bark beyond the said four thousand quintals which should be attempted to be exported, or not documented and cleared, should be confiscated to the Government. That the Government should give all needful assistance, in order that said privilege might be, in fact, exclusive; and engaged that during the continuance

of said contract, no person except the contractors should export or carry out bark beyond the limits of the Republic. That in the event of the interruption of the existing harmony between Bolivia and Peru, the duration of such interruption not to be reckoned as part of the time, at the expiration of which instalments were to be paid, nor by consequence of the term allowed for the exportation of bark. That in case the Peruvian Government should increase the transit duty now levied on the bark, the Bolivian Government should make allowance to the contractors for any damage arising from such increase. That in addition to the foregoing, which only had reference to the bark known as tabla calisaya, or the bark derived from the trunks of the trees, the Bolivian Government subsequently, on the 19th day of February, 1846, entered into another contract with Pinto & Co., by which the latter were authorized to export, annually, five hundred quintals of canuto bark, that is, bark derived from the branches of the trees, upon the payment of ten dollars per quintal duty to the Government; said contract to continue for four years from the 24th of March, 1846. It being also, in said second contract, that the tabla bark was of three times the price and estimation of the canuto, by reason of the greater quantity of salts, the active principle contained in the former kind of bark.

BROWN & BRUNE, *for plaintiff*.
Z. COLLINS LEE, *for defendant*.

*Evidence of Hugh Birckhead.*

The plaintiff then further proved, by Hugh Birckhead, that his firm, of Birckhead & Pearce, for many years had been acting as plaintiff's agents, in the importation of bark from the Pacific; that soon after the importation per St. Joseph was entered, he received notice that the appraisers had raised the duty on the bark so as to subject the importation to a penalty for undervaluation; that he then, and subsequently, applied to the appraisers and collector for information of the grounds or reasons for thus raising the duties, but said officers declined giving the reasons to him.

That after the appeal was made, he did not learn from the collector that he had named any merchant appraisers before the appeal was withdrawn. That bark is not sold in Peru or here by chemical analysis.

That in obedience to the instructions of the plaintiff, contained in his letter of the 11th of October, he paid the entire duties exacted by the defendant, under protest in writing.

*Protest.*

BALTIMORE, *October* 15, 1849.

GEORGE P. KANE, esquire,
*Collector of the customs for the port of Baltimore.*

DEAR SIR: I regret to learn that you still insist upon the exaction of

a duty of fifteen per cent. upon the enhanced value $7,339 56 placed upon 480 seroons of bark imported in the St. Joseph, from Arica, in addition to the duty of $7,035 30 already paid, or secured to be paid; and likewise of an additional duty of twenty per cent. upon the $53,997, by way of penalty for undervaluation in the invoice and entry of these goods.

To obtain possession of these goods without further delay, which is a matter of consequence to me, as some of them have already been sold, I find myself obliged to pay these sums, which you have resolved to exact upon them; but before doing so, I insist that the valuation of $54,241 55, which has been placed upon these goods, and upon which you claim to exact a duty of 15 per cent., as also the penalty of 20 per cent. on $53,997, is not their true dutiable value, but is excessive, unjust, and invalid.

That the value of such goods as stated in the invoice and declared in the entry, viz., $46,901 99, and upon which a duty of fifteen per cent. has been already paid, or secured to be paid, is their true dutiable value.

That said goods are not in whole or in part liable to any additionable duty or penalty by reason of any undervaluation, and that the amount of duty exacted by you over 15 per cent. on said invoice value, as well as the sum exacted by you as 20 per cent. additional duty or penalty, are excessive and improper demands, and are illegally exacted. And I now, therefore, in consequence, protest against the course which you have thought proper to pursue, and I give you notice that I mean to institute legal proceedings for the purpose of recovering the sums so illegally exacted.

I remain yours, respectfully,

EDWIN BARTLETT,
By his attorneys, BIRCKHEAD & PEARCE.

And again, on the 18th of October, addressed a letter of that date to the appraisers, asking them to explain the reasons which caused them to make the addition to the plaintiff's invoice per St. Joseph, to which he received the reply of that date.

*Letter from B. and P. to the Appraisers, October*, 18, 1849.

GENTS: We have been directed by Mr. Bartlett to request your furnishing him with your reasons for appraisal of his bark per St. Joseph. His object is to submit the whole subject to the Secretary of the Treasury, and avoid, if possible, a lawsuit.

Your compliance will oblige your obedient servants,

BIRCKHEAD & PEARCE.

Baltimore, October 18, 1849.

To Messrs. M. MCBLAIR, [and] H. W. EVANS, *Appraisers*.

*Letter from the Appraisers to B. and P., October* 18, 1849.

APPRAISER'S OFFICE,
*Port of Baltimore, October* 18, 1849.

GENTLEMEN: In answer to your communication of this day, we have to say, we do not feel bound to explain the reasons which caused us to make the addition to Wm. E. Bartlett's invoice of bark per St. Joseph to any one except the Hon. Secretary of the Treasury.

We remain with respect, gentlemen, your most obedient servants,

M. McB.
H. W. E.

Messrs. BIRCKHEAD & PEARCE.

*Evidence of R. B. Fitzgerald.*

The plaintiff then further proved, by Richard B. Fitzgerald, that for twenty years he has been engaged in business on the Pacific coast; that he has frequently been in Peru, and that bark is never bought or sold there by chemical analysis, but by sight; that persons are often deceived in regard to the amount of quinine in the article purchased; that there is great difference in the quality of barks. The Bolivian is the best.

That Pinto & Co. held, in June, 1849, and for several years previously, the monopoly or exclusive privilege of exporting from Bolivia the bark of that country.

That this monopoly was known throughout the world, and whatever bark of Bolivia was sold in Peru, in January, 1849, by others than Pinto & Co., had been smuggled from Bolivia.

That there were great changes in the value of this article, which began to rise after the monopoly of Pinto & Co.; that from January, 1849, and for several months, the price continued to advance, and very decidedly—say from 70 to $100 per quintal.

That Tacna, in Peru, is the chief market for this Bolivian bark. Arica is the port of Tacna, and fifteen leagues distant. Bolivia has only one port, so distant to the south from the district in Bolivia where the bark is obtained, that it is never sent to a foreign market through this port, but through the Peruvian ports of Islay and Arica, and mainly by the latter.

Witness then produced three invoices of bark which were shipped to London.

Invoice of 147 seroons of bark shipped at Arica on board the British barque "Director," Capt. Robert Tatchall, for London, to "order," by order of Wash'n Booth, esq., for account and risk of whom it may concern.

*Invoice of* 147 *seroons bark shipped to London.*

| | | |
|---|---|---|
| Brand No. 9. 48 seroons bark, ea. 6 arobes, nett 76 qqls., in Tacna, *a* $30 | | $2,160 0 |
| 52 seroons bark weighing gross 88 qqls., 6‡. Tare 5 qqls. 72‡, 88 qqls. 89‡, nett *a* $35 04 | | 2,942 5 |
| 47 seroons bark weighing gross 70 qqls., 27‡. Tare 5 qqls. 17‡, 20‡, nett *a* $79 | | 5,624 6 |
| 147 seroons | | $10,727 3 |
| CHARGES. | | |
| Peonage for opening, examining, receiving, and weighing | $20 4 | |
| Carriage to Arica, 24 cargas, *a* 12 rls | 36 0 | |
| 49½ 14 rls | 86 5 | |
| Peonage, examining and despatching 147 bultos *a* 1 rl | 18 3 | |
| Mole dues on 147 2 | 36 6 | |
| Store rent 147 1 | 18 3 | |
| Port agency 147 1 | 18 3 | |
| Stamps, postages, and petties | 10 4 | |
| | | 245 4 |
| | | $10,972 7 |
| Commissions *a* 2½ per cent | | 274 3 |
| | | $11,247 2 |

E. & O. E. Tacna, 17th April, 1849.

(Signed, pp.) GEORGE HELLMAN,
A. HELLMAN.

Invoice of 16 seroons bark shipped by George Hellman, esq., at Arica, on board the British barque "Director," Robert Tatchall, master, for London, and consigned to "order," by order and for account and risk of whom it may concern.

*Invoice of* 16 *seroons bark shipped to London.*

Bought by George Hellman, esq., Tacna, for cash.

| | | |
|---|---|---|
| W. B. 10. 12 seroons calisaya bark, nett 18 qqls. *a* $33 | ..... | $594 0 |
| 4 " sup. Bolivian calisaya tabla wg. nett 6 qqls 30½, *a* 73 | ..... | 459 7 |
| 16 seroons | ..... | $1,053 7 |
| CHARGES. | | |
| Peonage, examining, receiving, delivering, and despatching | $5 0 | |
| Packing hides and carriage to Arica | 24 6 | |
| Mole dues, store rent, and port agency | 8 0 | |
| Stamps, postages, petties, and b. lading | 4 4 | |
| | | 42 2 |
| | | $1,096 1 |
| Commissions 2½ per cent | | 27 3 |
| | | $1,123 4 |

E. & O. E. Lima, 24th May, 1849.

WASHN. BOOTH.

*Invoice, 53 seroons bark, shipped to Liverpool.*

Invoice of 53 seroons of bark, shipped by George Hellman, esq., at Arica, on board the British barque "Lawercost," John Pensonby master, for Liverpool, and consigned to "order," by order of the undersigned, for account and risk of whom it may concern.

Bought by George Hellman, esq., Tacna, for cash.

| | | |
|---|---|---|
| W. B. 13. 27 seroons superior Bolivian Calisaya bark, weighing gross 44 qqls. 6r. | | |
| Tare 3, 34, 41 qqls. 27r., $74 per qql..... | ..... | $3,054 0 |
| 14. 17 seroons superior Bolivian Calisaya bark, weighing gross 28 qqls. 72r. | | |
| Tare 1. 87..... | ..... | 2,094 2 |
| 15. 9 seroons superior Bolivian Calisaya bark, weighing gross 14 qqls. 86c. | | |
| Tare 29 14 qqls. 01, at 75..... | ..... | 1,050 6 |
| 53 seroons. | | $6,129 0 |
| *Charges.* | | |
| Peonage for opening, examining, receiving, &c., &c..... | 72 7 | |
| Carriage to Arica, 26½ cargas, at 14 rls. ea..... | 46 3 | |
| Mole dues, 53 packages, at 2..... | 13 2 | |
| Store rent and port agency..... | 13 2 | |
| Stamps, postages, bills of lading, and petties..... | 7 2 | |
| | | 153 0 |
| | | $6,352 0 |
| Commission 2½ per cent..... | ..... | 158 6 |
| | | $6,510 6 |

E. & O. E.

LIMA, *27th June*, 1849.

(Signed) WASH'N BOOTH.

These invoices approach nearest in point of time to the invoice per St. Joseph, of any shipments in which his house was interested.

*Evidence of M. McBlair.*

The defendant then proved, by Michael McBlair, that he was the government appraiser in the year 1849, and *that* acting in obedience to the Treasury instructions of the 2d of November, 1848.

*Treasury instructions, 2d November*, 1848.

(Copy.)

TREASURY DEPARTMENT, *November* 2, 1848.

SIR: I have to acknowledge receipt of your communication of the 21st ultimo, with the report of the United States appraisers in relation to an importation by Messrs. Birckhead & Pearce, of Baltimore, per bark "George and Henry," from Arica.

It appears, from the documents submitted, that the valuation of the article in question was predicated, by the appraisers, on the quantity of sulphate of quinine produced by the several packages in the invoice; a

portion of the same invoiced at 65c., and found on analysis, by Dr. Stewart, the special examiner, to produce $2\frac{2}{100}$ per cent. of quinine, being taken as the basis of the *of the* value of the others, with certain exceptions, which by the analysis produced an equal proportion of quinine.

It being the opinion of the Department that the course pursued by the appraisers was the true one, under the circumstances, and is sustained by law, you are directed to estimate and adjust the duties accordingly. Very respectfully, &c., &c., &c.,

R. J. WALKER, *Sec'ry of Treasury*.

WM. H. MARRIOTT,
*Collector of the customs, Balto.*

He sent certain parcels of the bark, per St. Joseph, to Dr. Stewart, the special examiner of the custom-house, for his chemical analysis; that this was done with every importation of bark; that he cannot now say what portions of the bark were sent to Dr. Stewart; that the course pursued by the appraisers is better shown by their communication with the Secretary of the Treasury, of the 20th October, 1849.

*Appraisers to Secretary of Treasury, 20th October*, 1849.

APPRAISER'S OFFICE,
*Port of Baltimore, October* 20, 1849.

SIR: In obedience to instructions to us, received through the collector of this port, we respectfully state, for your information, that there was entered at this port, on 25th August, 77 seroons of bark, per barque George and Henry, from Tacna or Arica, to the consignment of Messrs. Wyman, Appleton & Co.; they embraced several qualities at various costs; these were examined by Doctor Stewart, the special examiner of drugs, part being analyzed, and all passed. On 22d September Messrs. Birckhead & Pearce, agents of Mr. Edwin Bartlett, of New York, entered 614 seroons of bark, per St. Joseph, from Arica; which, being analyzed, the product of quinine, ascertained and compared with the product and cost of the lot per barque George and Henry, we felt it our duty to add to their invoice as follows:

| | | | | | | |
|---|---|---|---|---|---|---|
| J. T. P. & Co., | 454 | seroons, w'g | 681 | quintals, at $10 58 | $7,204 98 | |
| J. P. | 26 | " " | 37 | " 14 82.63 | 578 22 | |
| | | | | | $7,783 20 | |
| Commissions $2\frac{1}{2}$ per cent..... | | | | | 194 58 | |
| | | | | | $7,977 78 at 92 | $7,337 56 |
| Duty 15 per cent..... | | | | | | $1,100 93 |

From their addition the parties interested appealed for a reappraisement by merchants, which was granted by the collector; and when called on to name the necessary number from which two were to be selected, we promptly did so. Thinking we might obtain some information from the importer, we notified his agents that we requir edthe production of all correspondence, letters, and accounts, relating to this importation, which the Tariff of 1842, sec. 17, authorizes us to make. After some days they declined furnishing these documents, and an offer

made that, if an addition that would exempt them from the additional duty of 20 per cent. was made, they would submit; this, of course, could not be acceded to; in the mean time the appeal was withdrawn.

We beg leave to enclose copies of two letters, one from the late honorable Secretary of the Treasury to the collector of this port, dated 2d November, 1848, approving of analyzing; the other from the appraisers of this port to the collector, for the information of yourself, dated 28th April last, and respectfully ask a perusal of them, which will render any further explanation from us unnecessary. A copy of Mr. Bartlett's invoice, per St. Joseph, is also sent.

With great respect, we have the honor to be, sir, M. McB.
H. W. E.

To the Hon. Wm. M. Meredith,
*Secretary of the Treasury, Washington.*

P. S. We beg leave to add, the parcel of bark, per George & Henry, which cost 80 cents, produced $2\frac{7}{100}$ per cent. of quinine, that per St. Joseph, which was invoiced at 70 cents, produced $2\frac{8}{100}$, that at 53 cts., $2\frac{34}{100}$ of quinine; taking the production of the 80 cents bark as our basis, the above additions are the result.

That the importation of Messrs. Wyman, Appleton & Co., therein referred to, was an invoice of bark per George and Henry.

*Invoice of 77 seroons of bark.*

*Invoice of 77 seroons of bark, shipped by Wash'n Booth, on board the American barque "George and Henry," E. Pescud, master, bound for Baltimore, and consigned Messrs. Wyman, Appleton & Co., there for account of whom it may concern.*

Bought of Mr. George Hellman, Tacna, for cash.

| | | | Pounds. | | |
|---|---|---|---|---|---|
| 1 | 14 | Seroons Calisaya tabla bark, wg. | 2,100 | 35 | $735 0 |
| 2 | 13 | Do. superior Bolivian bark, wg. | 1,950 | 80 | 1,560 0 |
| 3 | 12 | Do. Calisaya tabla bark, wg. | 1,800 | 41 | 738 0 |
| 5 | 29 | Do. do. do do. | 4,350 | 37 | 1,609 4 |
| 6 | 5 | Do. Canuto do do. | 750 | 37 | 277 4 |
| 7 | 1 | Do. Calisaya tabla bark, do. | 150 | 30 | 45 0 |
| 8 | 3 | Do. superior Bolivian tabla. | 513 | 91½ | 469 3 |
| | | Nett. | 11,613 | | $5,434 3 |
| | | *Charges.* | | | |
| | | Peonage for opening, examining, and receiving. | | 13 7 | |
| | | Carriage to Arica, 38½ cgs. | | 56 6 | |
| | | Peonage, examination, and despatch | | 9 3 | |
| | | Mole dues, $19 02, stamps and petties, $6. | | 25 2 | |
| | | Store rent at Arica. | | 9 5 | |
| | | Port agency. | | 9 5 | |
| | | | | | 124 4 |
| | | Commissions paid Geo. Hellman, 2½ per cent. | | | 139 0 |
| | | | | | $5,627 7 |

E. & O. E.
Tacna, March 14, 1849. WASH'N BOOTH.

I, Charles B. Polhemus, acting consul of the United States for the port of Paita, do hereby certify, that Wash'n Booth duly appeared before me, and having taken the oath prescribed by law, did declare that the foregoing invoice, amounting to $5,697 7, five thousand six hundred and ninety-seven dollars seven rials, subscribed by him, contains a true and correct statement of the cost and charges of the merchandise therein expressed.

I furthy certify, that the depreciated currency, or usual currency of accounts of the Republic of Peru, in which currency the annexed invoice is made out, is ninety per dollar of currency, estimating the Spanish or American dollar at one hundred cents.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office at Paita, this thirteenth day of April, one thousand eight hundred and forty-nine.

[SEAL.]

C. B. POLHEMUS.

Quality approved:

DAVID STEWART, M. D.,
*U. S. special examiner.*

Aug. 27, 1849.

Which arrived about a month before the St. Joseph; that upon the return of the chemist, that the parcel per St. Joseph, invoiced at $70, contained more quinine than the parcel per George and Henry, invoiced at $80, they raised proportionably the value of the invoice per St. Joseph. That when the Government appraisers were called upon by the collector, after the appeal, to name five merchant appraisers, according to the practice prescribed by the Treasury Department, they named five gentlemen, as appears from the letter of the collector to the appraisers, and their reply.

*Letter from the Collector to the Appraisers.*

COLLECTOR'S OFFICE,
*Baltimore, 6th October*, 1849.

GENTLEMEN: Messrs. Birckhead & Pearce having demanded a reappraisement on their importation of bark per barque St. Joseph, you will please designate the names of five merchants for that purpose.

Respectfully,

JOHN C. VANWYCK,
*Dy. collector.*

Messrs. APPRAISERS.

*From the Appraisers to the Collector.*

APPRAISERS' OFFICE—*same date.*

SIR: In compliance with your notification that Messrs. Birckhead & Pearce have asked for a reappraisement of the bark per barque St. Joseph, we respectfully name the following gentlemen from which the number authorized under the Treasury order can be selected—D. U.

Brown, G. H. Keerle, R. H. Coleman, J. J. Grahame, John G. Chappell.

That witness saw the samples of the bark per St. Joseph, but cannot now say what was the number of those samples, these samples being brought to appraisers' office for examination, and were examined by them; that he wrote to Boston in regard to importations there, but cannot now say anything, from recollection, of the correspondence; the records of the appraisers' office will show that he has, for some time, ceased to hold the office of appraiser.

*Evidence of H. W. Evans.*

The defendant then proved, by Hugh W. Evans, that he was one of the official appraisers in January, 1849, and still is; when he came into office he found the practice of ascertaining the value of bark by chemical analysis, as shown by the other appraisers, established by Treasury regulation; that he considered himself bound to follow it; that in regard to the bark by the St. Joseph, the value was established in accordance with the report of the chemist, showing the amount of quinine in the portion of the importation sent to the chemist, correspond with the amount of the quinine found to be in the parcel per George and Henry; that he saw the bark, but made no personal examination of it, and indeed could form no idea of its value from examination, very little coming to this market, and he not being a judge of the article; has no recollection of a correspondence with other places in regard to this importation, and examined no witnesses here in reference to the bark or its foreign value; did decline giving to Messrs. Birckhead & Pearce any reasons for the advance they made in the value of the bark, as they had a right to do; at the time they sent the notice of the 6th of October, they had an intention of revising their appraisement, which was the object of the notice, and which they were authorized to do, under the instructions of the Treasury of December 31, 1847, any time before importing; did not communicate their object to Messrs. Birckhead & Pearce, or to the plaintiff.

*Evidence of Bines.*

The defendant then proved, by —— Bines, that he is the impost clerk, and the imposting of the duties usually takes place about a month after the payment; he also proved that the penalty for undervaluation under a Treasury circular of June 12, 1847.

*Treasury circular, 12th June, 1847.*

CIRCULAR OF R. J. WALKER,
*June* 12, 1847, *Treasury Department.*

When this penal duty is incurred on any goods entered at your port of impost, it must be paid before delivery of the goods for consump-

tion, or withdrawal from warehouse for transportation to another warehousing port, or before permission is given for lading the goods on board the vessel from W. H. for exportation to a foreign port. This penal duty is not a subject of drawback, and can't be returned on debenture. Nor will relief be afforded when the importer has not expressed dissatisfaction with the appraisement made by the United States appraisers, and so notified the collector, in wishing at the time, and obtained the benefit of a reappraisement by merchants, in pursuance of the 17th section of the act 30th August, 1842.

On all goods entered for warehousing, and withdrawn for transportation, under bond, to another port, is paid at the time of withdrawal, and that such penalty is never returned on exportation of such goods.

*Evidence of Dr. Stewart.*

The defendant then further proved, by Dr. Stewart, that he was the chemist, in the employment of the Government, in the year 1849; that under the practice of the Treasury Department samples of all importations of Peruvian bark into the port of Baltimore are sent to him for analysis; that he analyzed samples of bark per St. Joseph and George and Henry, in that year; that the paper

*Analysis.*

PERUVIAN BARK, *Sept.*, 1849.

| | |
|---|---|
| J. T. P. & Co. yields quinine (as disulphate) - - | 002.78 |
| Cinchonine - - - - | 002.00 |
| Total four per cent. and $\frac{78}{100}$ - - - - | 4.78 |
| J. P. yields quinine (as disulphate) - - - - | 002.34 |
| Chinconine - - - - - | 001.48 |
| Total three per cent. and $\frac{82}{100}$ - - - - | 3.82 |

per St. Joseph, from Arica.

DAVID STEWART, M. D.,
*U. S. Analyzer for port Balt.*

In the report which he made to the appraisers of his analysis of the bark by the St. Joseph, that his whole duty in the analysis which he makes is to ascertain the *the* quantity of the principle of sulphate of quinine, in the parcels sent to him. He of course knows nothing of the foreign value; that there is a great difference in the value of the bark, as shown by its yield of quinine. There are three grades of the genuine Peruvian or Bolivian bark—the Calisaya, (Tabla,) which is the first quality; the Tabla Carquecilla, which is the refuse of the first quality; and the Canuto or quill bark, which is from the branches of the trees.

The spurious barks may be detected by the eye from the genuine, and each quality of the bark is distinguishable by the eye.

The plaintiff's counsel then read in evidence the Treasurer's circular of the 11th of June, 1849.

(New series, No. 6.)

Circular instructions to collectors and other officers of the customs.

*Treasury circular, June* 11, '49.

TREASURY DEPARTMENT, *June* 11, 1849.

The following decisions of this Department, on questions to which its attention has been recently directed, are communicated for your information and government:

1st. That as the additional duty imposed in certain cases by the 8th section of the Tariff act of the 30th July, 1846, is not, in the opinion of the Department, to be viewed as a penalty, within the intent and meaning of existing laws, applications for remission of such duty, under the act of 2d March, 1797, providing for the remission of penalties, are not authorized by law, and cannot therefore be entertained by the Department.

2d. That appraisements duly made by the appraisers appointed in pursuance of law, having determined and fixed the true foreign market value of merchandise, on which value, with cost and charges added, the duties to be levied, any act of Congress to the contrary notwithstanding, and being by law final and conclusive, the Department cannot interpose for the relief of parties from the effect of any such appraisement, its interference extending no further than to sanction where it is thought proper, and before the duties are imposted, the re-examination and appraisement of goods in cases where the appraisers shall desire it, with the view, should they find cause, of correcting or amending their return to the collector.

(Signed) W. M. MEREDITH,
*Secretary of the Treasury.*

And the testimony being closed, the plaintiff, by his counsel, prayed the court to instruct the jury as follows:

In the circuit court U. S. Plaintiff's prayers.

*Plaintiff's prayers.*

BARTLETT vs. KANE.

1st. The plaintiff prayed the court to instruct the jury, that until superseded by a valid appraisement, the dutiable value of the plaintiff's

goods mentioned in the invoice duly verified and declared on the entry must be deemed the true dutiable value of such goods.

2d. The plaintiff further prays the court to instruct the jury, that the mode pursued by the appraisers, as stated in their evidence, of ascertaining the foreign dutiable value of the plaintiff's import of bark per St. Joseph, was illegal and their appraisement void.

3d. That the non-compliance by the plaintiff with the requirements of the appraisers contained in their letter of the 6th of October, 1849, did not make valid the illegal appraisement of the plaintiff's goods previously made, and then still appealed from.

4th. That the 17th section of the act of 1842, which declares that the refusal of a consignee to produce any papers which the permanent appraisers may call for, shall render the appraisement which they may make final and conclusive, applies only to appraisements made after such refusal, and therefore can have no effect in this case.

5th. That the additional duties exacted and retained on the parcels entered for warehousing and entitled to debenture and exported, was illegally exacted.

6th. That under the contracts between Pinto & Co. and the Bolivian Government, the plaintiff's goods are not to be considered goods actually purchased within the meaning of the 8th section of the act of 1846, and therefore the penalty prescribed by that act, and exacted in this case, was illegally exacted and may be recovered back in this suit.

And the defendant, by the district attorney, his counsel, prayed the court to instruct the jury as follows:

*Defendant's prayers.*

E. BARTLETT
vs.
GEORGE P. KANE.

Upon the statement of facts and other evidence in this case, the defendant, by his counsel, asks the following instructions to the jury:

1. That the plaintiff is not entitled to recover the amount claimed in this action, because he has not complied with the requisitions of the act of Congress in such cases provided.

2. That the value of the bark imported and appraised in this case was the true value, with the costs and expenses added thereon, and was ascertained by the official appraisers in the mode authorized by law and the instructions of the Treasury Department to the collectors in such cases.

3. That the penal duty of 20 per cent. imposed by the act of Congress for an undervaluation in invoices imported into the United States is not a duty in the ordinary meaning of duties or imposts, but a penalty or fine inflicted on the importer for a violation of the revenue laws of the United States, and is not therefore subject to drawback or debenture

upon a reshipment of the goods which have been subjected to this penalty.

4. That upon all the evidence in this case the defendant acted in compliance with the laws of the United States and instructions from the Treasury, and through the official appraisers of the United States examined the bark of the plaintiff, and also had it analyzed by the chemist appointed by the Government, and compared its analyzation and value with that of a similar cargo of bark imported from the same country by Wyman, Appleton & Co., brought into the port of Baltimore about a month before the bark of the plaintiff was entered. And if, from the evidence in this cause, that the plaintiff was duly notified by the official appraisers of the undervaluation of his bark, and of their increase of its marketable value after such examination, analysis, and comparison; and that he was required by the appraisers to furnish papers, documents, or other evidence for the purpose of satisfying said appraisers as to the value of said importation, and refused to comply; and afterwards, or at that time, withdrew voluntarily his appeal to merchant appraisers, and then paid the duties under protest, he is not entitled to recover.

But the court rejected the prayers of the plaintiff and each of them, and gave the following instructions to the jury.

*Opinion of the court.*

BARTLETT vs. KANE.

The facts of this case are these:

In the month of January, 1849, Messrs. Pinto & Co., of Bolivia, shipped from the port of Arica, in Peru, a quantity of bark grown in Bolivia, but known under the name of Peruvian bark. These shippers had, in the years 1845 and 1846, contracts with the Bolivian Government for a monopoly in the trade of this article, for the term of several years, for which they were to pay the Government a certain price.

One of these contracts states that "Tabla Calisaya bark, which is cut from the body of the tree, being of three times the value of the Canuto bark, which is cut from the branches, and this by reason of the greater quantity of the salts, the active principle contained therein."

This bark, thus procured, is sent to Tacna, and thence usually to Arica, a port in Peru, from which port it is shipped abroad.

From this port are also sent quantities of this bark which are obtained clandestinely in Bolivia and brought to Arica. Sometimes this bark is shipped from a Bolivian port, but this much increases its cost at the port of shipment.

The bark in question was by Pinto & Co. despatched from Arica in the San Josef, destined for Baltimore, to the plaintiff, residing in New York, and he consigned it to Messrs. Birckhead & Pearce, of Baltimore, by whom it was here entered at the custom-house in the month of Septem-

ber, 1849. In the invoices accompanying this shipment the first quality, or Tabla Calisaya, was invoiced at $70 per quintal. About a month before the arrival of the San Josef at Baltimore, another invoice of bark had arrived at Baltimore, in the barque George and Henry, to different consignees, which had left the port of Arica about two months after the date of the bill of lading of the cargo in question, and there was evidence that a rise, throughout the whole of 1849, had taken place in the price of this kind of bark in the ports of South America; the first quality of bark received by the George and Henry, some at 80 cents and some at 90.

On the arrival of plaintiff's cargo Messrs. Birckhead & Pearce entered it in the usual way, and samples of it were submitted to the appraisers for examination. Neither of the appraisers was a good judge of the value of this article, but directed it to be subjected to a chemical analysis by the Government chemist, and having subjected the bark of the other shipment to a like process, they found the cargo by the San Josef, which was invoiced at $70 per quintal, to contain more sulphate of quinine than the bark received by the George and Henry, which was invoiced at a much higher price; this sulphate of quinine being the active principle of the bark.

To this test these appraisers felt themselves bound to subject this bark, in consequence of the orders of the Treasury circular of the 2d day of November, 1848, in these words:

(Herein before inserted on the 52d page of this record.)

After calling for the bill of lading, which was sent to them, the appraisers determined that the duty upon the bark should be so increased that it became liable to the additional or penal duty of 20 per cent., and made to the collector the following report:

(Herein before inserted on the 14th page of this record.)

On the 4th October, the collector notified Messrs. Birckhead & Pearce of this decision. They on the next day asked to be furnished with the grounds of such decision, and on the 6th of October protest in writing against the decision, and ask that the case shall be submitted to merchant appraisers, as required by law. On the same day, and after such request of Birckhead & Pearce, the appraisers write to Messrs. Birckhead & Pearce this letter:

(Herein before inserted at [page] 17 of this record.)

And the appraisers now state that this letter was written to enable them to ascertain if they had committed any error or mistake in their opinion, and to enable them to review and correct such opinion if erroneous.

On the 11th of October Mr. Bartlett declines to furnish the papers

asked for by the appraisers in their letter of the 6th, directs the appeal to the merchant appraisers to be withdrawn, proposes to pay the additional duty, except the 20 per cent., as assessed by the appraisers, and if this be declined, instructs Birckhead & Pearce to pay the duties under protest. This is the letter:

(Herein before inserted at page 18 of this record.)

Some further correspondence occurs, in all of which the appraisers insist upon the correctness of their views, and adhere to their original opinion.

Some part of this cargo by the San Joseph was entered for consumption, and some for exportation. Mr. Bartlett being desirous of having the latter portion transported to New York, the collector before he would permit this to be done insisted upon receiving *receiving* all the duties thereon, including the 20 per cent. additional, which was also paid under protest.

The papers called for by the appraisers, in their letter of the 6th October, have not been produced even upon the trial.

The counsel for the plaintiff contends—

1st. That the invoice value of the goods is to be deemed the true value until evidence be offered to show their valuation to be erroneous.

2d. That the only method of correcting this valuation is by showing a valid appraisement according to law.

3d. That the appraisement in this case was not a valid one.

4th. That the refusal of the plaintiff to furnish the papers called for by the appraisers did not affect his interest, but that the appraisement was erroneous.

Lastly. That having exported some of this bark, he is entitled to the debenture upon such exportation, including the 20 per cent. he paid as a penal infliction for an attempt to defraud the revenue laws of the United States.

The first proposition may be conceded to the plaintiff, and the question occurs, was the appraisement in this case a valid one?

I do not think the Secretary of the Treasury had the power of fixing a chemical analysis of the bark, as the only test of its dutiable value, in the manner he attempted to do in his circular of 2d November, 1848. Although the contract of Pinto & Co. regards this as one method of determining the relative value of bark, the law of Congress fixes the duties upon the market value at the port of exportation; this can certainly not mean that a purchaser of this commodity shall, when he goes to buy, carry with him a chemist to fix the exact quantity of sulphate of quinine contained in the thing purchased, but he must and can only look at the fair market value of the article among those trading in it at the place of exportation.

He can only be required to adopt the methods usually adopted by merchants in making purchases. Still the appraisers, when they suspect a wrong done to the Government, have a right to employ this means as a test by which, with the other knowledge and information

in their power, and to be procured by them, they may be enabled to arrive at a correct estimate of the true value of the article imported. Here, too, when the appraisers, having seen the two articles, are unable to form a judgment with regard to their value, they had a right to resort to this mode of ascertainment; and with this information before them, they could legitimately come to the conclusions they have reached. But supposing I am wrong upon this subject, the party, by withdrawing his appeal, and refusing to produce the papers called for, has fixed the correctness of the appraisement. The appraisers certainly had the right to call for these papers, whether with the view of correcting their own judgment, if erroneous, or of laying them before the merchant appraisers, in the event of the prosecution of the appeal.

To refuse to produce papers admitted to be in a party's possession, always raises the strongest inference that those papers, if produced, would operate against the person holding them. In Government claims this refusal almost amounts to evidence of fraud. The act of Congress makes it, in such a case as this, conclusive proof that the papers, when produced, would be demonstrative against the pretensions of the party having them in his possession.

The act makes no restriction as to the time when these papers may be called for; it does not designate who shall make the demand, and I see no reason why the demand made in this case was not properly made, and by the proper officers.

The next question then is, to what amount of debenture is the party entitled to in this case, upon the bark which he has exported?

Here there is an increase made by the appraisers of about 15 per cent. upon the invoice value of the cargo. The consequence of this appraisement is, that a penal exaction of 20 per cent. is imposed upon this cargo, by way of punishment for this attempt upon the revenue laws of the country. Here are two distinct things—one is an ascertainment of actual value, the other, the penal consequence following from this ascertainment of real value; for the first, he is entitled to debenture; for the second, he is not so entitled.

The first fixes the actual value upon which, if the party had entered the goods at the price so fixed, the duty would have been paid; it fixes the value of the goods on which the ad valorem duty is to be charged; this duty is affected by the increase or decrease of such value. But the other is quite another affair. If the appraisers fix the increased value at 11 25, or 50 per cent. on the invoice, the same 20 per cent. can be charged; the one fluctuates, according to the judgment of the appraisers; they have the right of determining what it shall be; the other is a fixed and settled per centage established by the act of Congress.

If upon this 20 per cent. assessment a party would have a right to claim a debenture, the party offending might defeat this provision by an exportation of the article in regard to which he had offended.

I therefore think that the plaintiff is not entitled to any drawback upon the exportation of this beyond the duty which would accrue if

the goods had been entered at the price fixed by the appraisers as their true value.

To which [instruction] of the court, in rejecting the plaintiff's prayers and each of them, and said opinion of the court, the plaintiff by his counsel excepted, and asks the court to sign and seal this exception, which is now done accordingly.

JOHN GLENN. [SEAL.]

And now here at this day, to wit, the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and fifty-two, the said Edwin Bartlett produced to the circuit court here the writ of the United States of America, for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid, of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next; which said writ of error is in the words and of the tenor following, to wit.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the United States, for the fourth circuit, in and for the Maryland district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you, or [SEAL.] some of you, between Edwin Bartlett, plaintiff, and George P. Kane, defendant, a manifest error hath happened, to the great damage of the said Edwin Bartlett, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and fifty-one.

B. and B. Issued 26th April, 1852.

THO. SPICER,
*Clerk, circuit court.*

In pursuance whereof, and according to the form and effect of the

act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

*Writ of error bond.*

Know all men by these presents, that we, Charles R. Pearce, Hugh Birckhead, and Hugh Birckhead, jun'r, are held and firmly bound unto George P. Kane, of the city of Baltimore, in the district of Maryland, in the just and full sum of five hundred dollars, lawful money of the United States, to be paid to the [said] George P. Kane, his executors, administrators, or assigns; to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this eleventh day of November, in the year of our Lord one thousand eight hundred and fifty-two.

Whereas at a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-two, the said George P. Kane, by the judgment of the same court, recovered against a certain Edwin Bartlett, a citizen of the State of New York, his costs and charges by him about his defence in this behalf laid out and expended.

And whereas the said Edwin Bartlett hath sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said George P. Kane, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, to show cause, if any there be, why the judgment aforesaid, so as aforesaid rendered, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Now the condition of the aforegoing obligation is such, that if the said Edwin Bartlett shall well and truly prosecute with effect his said writ of error, and pay to the said George P. Kane, his heirs, executors, administrators, or assigns, the costs and charges adjudged unto him by the said circuit court; and also all such costs and charges which may be awarded to him by the said Supreme Court, in case the said Edwin Bartlett shall fail to make good his said plea, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue.

C. R. PEARCE, [SEAL.]
HUGH BIRCKHEAD, [SEAL.]
HUGH BIRCKHEAD, Jr. [SEAL.]

Signed, sealed, and delivered in presence of—
THOMAS B. LEWIS.

Approved: R. B. TANEY.